

AMENDED IN ASSEMBLY JUNE 30, 2004

AMENDED IN ASSEMBLY JUNE 21, 2004

AMENDED IN ASSEMBLY JUNE 17, 2004

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE APRIL 29, 2004

AMENDED IN SENATE APRIL 26, 2004

SENATE BILL

No. 1682

Introduced by Senators Ducheny and Speier
(Principal coauthor: Senator Oller)
(Coauthors: Senators Dunn and Sher)
(Coauthors: Assembly Members Kehoe and Steinberg)

February 20, 2004

An act to amend Sections 1353.6, 1363, 1365.1, 1365.2, and 1367.1, to add Section 1367.4 to, and to repeal Section 1366.3 of, the Civil Code, and to amend Sections 116.540 and 703.010 of, and to add Section 729.035 to, the Code of Civil Procedure, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 1682, as amended, Ducheny. Common interest developments.

(1) Existing law defines and regulates common interest developments and prohibits the governing documents of a common interest development from prohibiting the displaying of certain noncommercial signs, posters, flags, or banners, in an owner's separate interest, as specified.

This bill would extend the provisions described above to an owner's exclusive use common area.

(2) Existing law requires that members of a common interest development association have access to the association records, including accounting books and membership lists, as specified.

This bill would provide that, upon a court finding that a request to copy or inspect was unlawfully denied, a member is entitled to reasonable attorney's fees and court costs, and that the court may impose a civil penalty of *up to* \$500 per violation.

(3) Existing law requires the managing association of a common interest development to make the accounting books and records and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative, as specified.

This bill would revise the provisions described above to have them apply to all association records, as defined, including contracts to which the association is or has been a party. The bill would also extend these provisions to community service organizations related to an association.

(4) Existing law defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. Existing law provides that a regular or special assessment of the association, late charges, reasonable costs of collection, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a specified document and follows a specified process. Existing law permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure.

Existing law authorizes an owner of a separate interest in a common interest development to pay assessments that are in dispute in full under protest. Existing law, the right of redemption, permits a judgment debtor, as defined, to redeem his or her real property, as specified, after judicial foreclosure only if the decree of foreclosure finds that a deficiency judgment may be ordered against the debtor.

This bill would revise and recast the procedures for collecting delinquent assessments for certain debts that arise on and after January 1, 2005. The bill would provide that when an association of a common interest development seeks to collect a delinquent assessment of less



than \$2,500, not including specified late charges and fees, the association must either file a civil action in small claims court or record a lien upon which it would be prohibited from foreclosing. The bill would repeal the provision authorizing the owner of a separate interest development to pay assessments that are in dispute in full under protest.

The bill would permit an association of a common interest development seeking to collect a delinquent regular or special assessment of \$2,500 or more, not including specified late charges and fees, to use foreclosure subject to specified conditions. Among these conditions, the bill would require the board of directors of an association to make the decision to record a lien against a separate interest or to foreclose upon a lien at an executive meeting of the board, by a majority vote, and to record the results of the vote, as specified, and would require the board to provide notice of the decision to foreclose, as specified.

The bill would require, if the owner so requests, that the association permit the owner of the separate interest to elect alternative dispute resolution, under specified circumstances, but only if AB 1836 of the 2003–04 Regular Session is enacted. The bill would further provide that, notwithstanding any law to the contrary, a nonjudicial *or judicial* foreclosure by an association to collect upon a debt for a delinquent assessment, as specified, is subject to a right of redemption. The bill would provide a redemption period of 90 days. *The bill would establish a minimum bid of 90 percent of the appraised value, exclusive of senior liens, as specified, in a judicial or nonjudicial foreclosure to collect upon a debt for a delinquent assessment, as specified.* The bill would exempt from its provisions developers and separate interest owners in timeshare projects, as specified.

The bill would also authorize a homeowner's association to appear and participate in small claims court hearings through a management company representative or bookkeeper who appears on behalf of the homeowner's association.

(5) The bill would further specify that it shall become operative only if AB 2598 is also enacted.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

SECTION 1. Section 1353.6 of the Civil Code is amended to read:

1353.6. (a) The governing documents, including the operating rules, may not prohibit posting or displaying of noncommercial signs, posters, flags, or banners on or in an owner's separate interest or exclusive use common area, except as required for the protection of public health or safety or if the posting or display would violate a local, state, or federal law.

(b) For purposes of this section, a noncommercial sign, poster, flag, or banner may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or displayed from the yard, window, door, balcony, or outside wall of the separate interest or the exclusive use common area, but may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces.

(c) An association may prohibit noncommercial signs and posters that are more than 9 square feet in size and noncommercial flags or banners that are more than 15 square feet in size.

SEC. 2. Section 1363 of the Civil Code is amended to read:

1363. (a) A common interest development shall be managed by an association which may be incorporated or unincorporated. The association may be referred to as a community association.

(b) An association, whether incorporated or unincorporated, shall prepare a budget pursuant to Section 1365 and disclose information, if requested, in accordance with Section 1368.

(c) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

The association, whether incorporated or unincorporated, may exercise the powers granted to an association by Section 383 of the Code of Civil Procedure and the powers granted to the association in this title.

1 (d) Meetings of the membership of the association shall be
2 conducted in accordance with a recognized system of
3 parliamentary procedure or any parliamentary procedures the
4 association may adopt.

5 (e) Notwithstanding any other provision of law, notice of
6 meetings of the members shall specify those matters the board
7 intends to present for action by the members, but, except as
8 otherwise provided by law, any proper matter may be presented at
9 the meeting for action.

10 (f) (1) Members of the association shall have access to
11 association records, including accounting books and records and
12 membership lists, in accordance with Article 3 (commencing with
13 Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of
14 the Corporations Code. The members of the association shall have
15 the same access to the operating rules of the association as they
16 have to the accounting books and records of the association.

17 (2) A member of the association may initiate a civil action to
18 enforce his or her rights under this subdivision, and upon a finding
19 that a request to copy or inspect was denied in violation of this
20 subdivision, the member shall be entitled to reasonable attorney's
21 fees and court costs, and the court may impose a civil penalty of
22 *up to* five hundred dollars (\$500) per violation.

23 (g) If an association adopts or has adopted a policy imposing
24 any monetary penalty, including any fee, on any association
25 member for a violation of the governing documents or rules of the
26 association, including any monetary penalty relating to the
27 activities of a guest or invitee of a member, the board of directors
28 shall adopt and distribute to each member, by personal delivery or
29 first-class mail, a schedule of the monetary penalties that may be
30 assessed for those violations, which shall be in accordance with
31 authorization for member discipline contained in the governing
32 documents. The board of directors shall not be required to
33 distribute any additional schedules of monetary penalties unless
34 there are changes from the schedule that was adopted and
35 distributed to the members pursuant to this subdivision.

36 (h) When the board of directors is to meet to consider or impose
37 discipline upon a member, the board shall notify the member in
38 writing, by either personal delivery or first-class mail, at least 10
39 days prior to the meeting. The notification shall contain, at a
40 minimum, the date, time, and place of the meeting, the nature of



1 the alleged violation for which a member may be disciplined, and
2 a statement that the member has a right to attend and may address
3 the board at the meeting. The board of directors of the association
4 shall meet in executive session if requested by the member being
5 disciplined.

6 If the board imposes discipline on a member, the board shall
7 provide the member a written notification of the disciplinary
8 action, by either personal delivery or first-class mail, within 15
9 days following the action. A disciplinary action shall not be
10 effective against a member unless the board fulfills the
11 requirements of this subdivision.

12 (i) Whenever two or more associations have consolidated any
13 of their functions under a joint neighborhood association or similar
14 organization, members of each participating association shall be
15 entitled to attend all meetings of the joint association other than
16 executive sessions, (1) shall be given reasonable opportunity for
17 participation in those meetings and (2) shall be entitled to the same
18 access to the joint association's records as they are to the
19 participating association's records.

20 (j) Nothing in this section shall be construed to create, expand,
21 or reduce the authority of the board of directors of an association
22 to impose monetary penalties on an association member for a
23 violation of the governing documents or rules of the association.

24 SEC. 3. Section 1365.1 of the Civil Code is amended to read:

25 1365.1. (a) The association shall distribute the written notice
26 described in subdivision (b) to each member of the association
27 during the 60-day period immediately preceding the beginning of
28 the association's fiscal year. The notice shall be printed in at least
29 12-point type. An association distributing the notice to an owner
30 of an interest that is described in Section 11003.5 of the Business
31 and Professions Code may delete from the notice described in
32 subdivision (b) the portion regarding meetings and payment plans.

33 (b) The notice required by this section shall read as follows:

34
35 "NOTICE

36
37 ASSESSMENTS AND FORECLOSURE

38
39 This notice outlines some of the rights and responsibilities of
40 owners of property in common interest developments and the

associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND NONJUDICIAL FORECLOSURE

The failure to pay association assessments may result in the loss of an owner's property without court action, often referred to as nonjudicial foreclosure. While the association is limited in its use of nonjudicial *or judicial* foreclosure for liens perfected and recorded on and after January 1, 2005, if the underlying debt is for the failure to pay association assessments or dues, when using nonjudicial *or judicial* foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the lien is not paid. Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time. (Sections 1366 and 1367.1 of the Civil Code)

In a nonjudicial *or judicial* foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial *or judicial* foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this, nor may the association use nonjudicial *or judicial* foreclosure to collect debts for delinquent assessments under \$2,500, not including late charges and certain fees. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the

1 association must send a description of its collection and lien
2 enforcement procedures and the method of calculating the
3 amount. It must also provide an itemized statement of the charges
4 owed by the owner. An owner has a right to review the
5 association's records to verify the debt. (Section 1367.1 of the
6 Civil Code)

7 If a lien is recorded against an owner's property in error, the
8 person who recorded the lien is required to record a lien release
9 within 21 days, and to provide an owner certain documents in this
10 regard. (Section 1367.1 of the Civil Code)

11 The collection practices of the association may be governed by
12 state and federal laws regarding fair debt collection. Penalties can
13 be imposed for debt collection practices that violate these laws.

14 PAYMENTS

15
16
17 When an owner makes a payment, he or she may request a
18 receipt, and the association is required to provide it. On the receipt,
19 the association must indicate the date of payment and the person
20 who received it. The association must inform owners of a mailing
21 address for overnight payments. (Section 1367.1 of the Civil
22 Code)

23 An owner may dispute an assessment debt by giving the board
24 of the association a written explanation, and the board must
25 respond within 15 days if certain conditions are met.

26 An owner is not liable for charges, interest, and costs of
27 collection, if it is established that the assessment was paid properly
28 on time. (Section 1367.1 of the Civil Code)

29 MEETINGS AND PAYMENT PLANS

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31
32 An owner of a separate interest that is not a time-share may
33 request the association to consider a payment plan to satisfy a
34 delinquent assessment. The association must inform owners of the
35 standards for payment plans, if any exist. (Section 1367.1 of the
36 Civil Code)

37 The board of the directors must meet with an owner who makes
38 a proper written request for a meeting to discuss a payment plan
39 when the owner has received a notice of a delinquent assessment.
40 These payment plans must conform with the payment plan

standards of the association, if they exist. (Section 1367.1 of the Civil Code)”

SEC. 4. Section 1365.2 of the Civil Code is amended to read:

1365.2. (a) (1) The association shall make available for inspection and copying by a member of the association, or the member’s designated representative, as provided by this section, all association records, including, but not limited to, accounting books and records, agendas and minutes of meetings of the governing board of the association, and agendas and minutes of meetings of association committees. The provisions of the section shall apply ~~organization related to an~~ *to any community service organization or similar entity, as defined in paragraph (3) of subdivision (c) of Section 1368, that is related to the association*, and the section shall operate to give a member of the ~~organization~~ *community service organization or similar entity* a right to inspect and copy the records of that organization *or entity* equivalent to that granted to association members by this section.

(2) A member of the association may designate another person to inspect and copy the association records on the member’s behalf. The member shall make this designation in writing.

(b) (1) The association shall make the association records available for inspection and copying in the association’s business office within the common interest development.

(2) If the association does not have a business office within the development, the association shall make the association records available for inspection and copying at a place that the requesting member and the association agree upon.

(3) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to paragraph (2), or if the requesting member submits a written request directly to the association for copies, the association may satisfy the requirement to make the association records available for inspection and copying by mailing copies of the requested records to the member by first-class mail within 10 days of receiving the member’s request. The association may bill the requesting member for its actual, reasonable costs for copying and mailing requested documents. The association shall inform the member of the amount of the copying and mailing costs before sending the requested documents.

(c) (1) Except as provided in paragraph (2), the association may withhold or redact information from the association records for any of the following reasons:

(A) The release of the information is reasonably likely to lead to identity theft. For the purposes of this section, “identity theft” means the unauthorized use of another person’s personal identifying information to obtain credit, goods, services, money, or property.

(B) The release of the information is reasonably likely to lead to fraud in connection with the association.

(C) The information is privileged under law.

(2) Except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee’s name, social security number, or other personal information.

(d) (1) The association records and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member’s interest as a member. An association may bring an action against any person who violates this section for injunctive relief and for actual damages to the association caused by the violation.

(2) This section may not be construed to limit the right of an association to damages for misuse of information obtained from the association records pursuant to this section or to limit the right of an association to injunctive relief to stop the misuse of this information.

(3) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney’s fees, in a successful action to enforce its rights under this section.

(e) A member of an association may bring an action to enforce the member’s right to inspect and copy the association records. If a court finds that the association unreasonably withheld access to the association records, the court shall award the member reasonable costs and expenses, including reasonable attorney’s fees, and may assess a civil penalty of up to five hundred dollars (\$500) for each violation.

(f) For the purposes of this section “association records” includes, but is not limited to, signed contracts to which the

1 association is or has been a party or where association assessments
2 provide payment for services, invoices, receipts, check registers,
3 canceled checks, purchase orders, accounting statements, bank
4 statements, any document that can be used to verify any financial
5 report issued by the association or its auditor, and common area
6 maintenance records.

7 (g) The association may charge a fee to the requesting member,
8 which fee shall not exceed the association's reasonable cost to
9 copy the requested records of the association.

10 SEC. 5. Section 1366.3 of the Civil Code is repealed.

11 SEC. 6. Section 1367.1 of the Civil Code is amended to read:

12 1367.1. (a) A regular or special assessment and any late
13 charges, reasonable fees and costs of collection, reasonable
14 attorney's fees, if any, and interest, if any, as determined in
15 accordance with Section 1366, shall be a debt of the owner of the
16 separate interest at the time the assessment or other sums are
17 levied. At least 30 days prior to recording a lien upon the separate
18 interest of the owner of record to collect a debt that is past due
19 under this subdivision, the association shall notify the owner of
20 record in writing by certified mail of the following:

21 (1) A general description of the collection and lien enforcement
22 procedures of the association and the method of calculation of the
23 amount, a statement that the owner of the separate interest has the
24 right to inspect the association records, pursuant to Section 8333
25 of the Corporations Code, and the following statement in 14-point
26 boldface type, if printed, or in capital letters, if typed:
27 "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS
28 PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND
29 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT
30 COURT ACTION".

31 (2) An itemized statement of the charges owed by the owner,
32 including items on the statement which indicate the amount of any
33 delinquent assessments, the fees and reasonable costs of
34 collection, reasonable attorney's fees, any late charges, and
35 interest, if any.

36 (3) A statement that the owner shall not be liable to pay the
37 charges, interest, and costs of collection, if it is determined the
38 assessment was paid on time to the association.

39 (4) The right to request a meeting with the board as provided
40 by subdivision (c).

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) An owner may dispute the debt noticed pursuant to subdivision (a) by submitting to the board a written explanation of the reasons for his or her dispute. The board shall respond in writing to the owner within 15 days of the date of the postmark of the explanation, if the explanation is mailed within 15 days of the postmark of the notice.

(2) An owner, other than an owner of any interest that is described in Section 11003.5 of the Business and Professions Code, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the

1 name and address of the trustee authorized by the association to
2 enforce the lien by sale. The notice of delinquent assessment shall
3 be signed by the person designated in the declaration or by the
4 association for that purpose, or if no one is designated, by the
5 president of the association, and mailed in the manner set forth in
6 Section 2924b, to all record owners of the owner's interest in the
7 common interest development no later than 10 calendar days after
8 recordation. Within 21 days of the payment of the sums specified
9 in the notice of delinquent assessment, the association shall record
10 or cause to be recorded in the office of the county recorder in which
11 the notice of delinquent assessment is recorded a lien release or
12 notice of rescission and provide the owner of the separate interest
13 a copy of the lien release or notice that the delinquent assessment
14 has been satisfied. A monetary charge imposed by the association
15 as a means of reimbursing the association for costs incurred by the
16 association in the repair of damage to common areas and facilities
17 for which the member or the member's guests or tenants were
18 responsible may become a lien against the member's separate
19 interest enforceable by the sale of the interest under Sections 2924,
20 2924b, and 2924c, provided the authority to impose a lien is set
21 forth in the governing documents. It is the intent of the Legislature
22 not to contravene Section 2792.26 of Title 10 of the California
23 Code of Regulations, as that section appeared on January 1, 1996,
24 for associations of subdivisions that are being sold under authority
25 of a subdivision public report, pursuant to Part 2 (commencing
26 with Section 11000) of Division 4 of the Business and Professions
27 Code.

28 (e) Except as indicated in subdivision (d), a monetary penalty
29 imposed by the association as a disciplinary measure for failure of
30 a member to comply with the governing instruments, except for
31 the late payments, may not be characterized nor treated in the
32 governing instruments as an assessment that may become a lien
33 against the member's subdivision separate interest enforceable by
34 the sale of the interest under Sections 2924, 2924b, and 2924c.

35 (f) A lien created pursuant to subdivision (d) shall be prior to
36 all other liens recorded subsequent to the notice of assessment,
37 except that the declaration may provide for the subordination
38 thereof to any other liens and encumbrances.

39 (g) An association may not voluntarily assign or pledge the
40 association's right to collect payments or assessments, or to

1 enforce or foreclose a lien to a third party, except when the
2 assignment or pledge is made to a financial institution or lender
3 chartered or licensed under federal or state law, when acting within
4 the scope of that charter or license, as security for a loan obtained
5 by the association; however, the foregoing provision may not
6 restrict the right or ability of an association to assign any unpaid
7 obligations of a former member to a third party for purposes of
8 collection. Subject to the limitations of this subdivision, after the
9 expiration of 30 days following the recording of a lien created
10 pursuant to subdivision (d), the lien may be enforced in any
11 manner permitted by law, including sale by the court, sale by the
12 trustee designated in the notice of delinquent assessment, or sale
13 by a trustee substituted pursuant to Section 2934a. Any sale by the
14 trustee shall be conducted in accordance with Sections 2924,
15 2924b, and 2924c applicable to the exercise of powers of sale in
16 mortgages and deeds of trusts. The fees of a trustee may not exceed
17 the amounts prescribed in Sections 2924c and 2924d.

18 (h) Nothing in this section or in subdivision (a) of Section 726
19 of the Code of Civil Procedure prohibits actions against the owner
20 of a separate interest to recover sums for which a lien is created
21 pursuant to this section or prohibits an association from taking a
22 deed in lieu of foreclosure.

23 (i) If it is determined that a lien previously recorded against the
24 separate interest was recorded in error, the party who recorded the
25 lien shall, within 21 calendar days, record or cause to be recorded
26 in the office of the county recorder in which the notice of
27 delinquent assessment is recorded a lien release or notice of
28 rescission and provide the owner of the separate interest with a
29 declaration that the lien filing or recording was in error and a copy
30 of the lien release or notice of rescission.

31 (j) (1) An association that fails to comply with the procedures
32 set forth in this section shall, prior to recording a lien, recommence
33 the required notice process.

34 (2) Any costs associated with recommencing the notice process
35 shall be borne by the association and not by the owner of a separate
36 interest.

37 (k) This section only applies to liens recorded on or after
38 January 1, 2003.

39 (l) This section is subordinate to, and shall be interpreted in
40 conformity with, Section 1367.4.

1 SEC. 7. Section 1367.4 is added to the Civil Code, to read:

2 1367.4. (a) Notwithstanding any law or any provisions of the
3 governing documents to the contrary, this section shall apply to
4 debts for assessments that arise on and after January 1, 2005.

5 (b) An association that seeks to collect a delinquent regular or
6 special assessment of an amount less than two thousand five
7 hundred dollars (\$2,500), not including any late charges, fees and
8 costs of collection, or interest, may attempt to collect that debt only
9 in either of the following ways:

10 (1) By a civil action in small claims court, pursuant to Chapter
11 5.5 (commencing with Section 116.110) of Title 1 of the Code of
12 Civil Procedure. An association that chooses to proceed by an
13 action in small claims court, and prevails, may enforce the
14 judgment as permitted under Article 8 (commencing with Section
15 116.810) of Title 1 of the Code of Civil Procedure.

16 (2) By recording a lien on the owner's separate interest upon
17 which the association may not foreclose. If requested by the owner
18 of a separate interest whom the association asserts is delinquent in
19 paying assessments, an association that chooses to record a lien
20 under these provisions, prior to recording the lien, shall permit the
21 owner to elect alternative dispute resolution as set forth in Article
22 2 (commencing with Section 1369.510) of Chapter 7. This
23 procedure shall apply only if Assembly Bill 1836 of the 2003–04
24 Regular Session is enacted.

25 (c) An association that seeks to collect a delinquent regular or
26 special assessment of an amount of two thousand five hundred
27 dollars (\$2,500) or more, not including any late charges, fees and
28 costs of collection, or interest, may use *nonjudicial or judicial*
29 foreclosure subject to the following conditions:

30 (1) The decision to record a lien for a delinquent assessment
31 shall be made only by the board of directors of the association and
32 may not be delegated to an agent of the association. The board shall
33 approve the decision by a majority vote of the board members in
34 an open session. The board shall record the vote in the minutes of
35 that meeting.

36 (2) If requested by the owner of a separate interest whom the
37 association asserts is delinquent in paying assessments, prior to
38 recording any lien on an owner's separate interest, the association
39 shall permit the owner to elect alternative dispute resolution as set
40 forth in Article 2 (commencing with Section 1369.510) of Chapter

1 7. This procedure shall apply only if Assembly Bill 1836 of the
2 2003–04 Regular Session is enacted.

3 (3) The decision to foreclose upon a lien for a delinquent
4 assessment that has been validly recorded shall be made only by
5 the board of directors of the association and may not be delegated
6 to an agent of the association. The board shall approve the decision
7 by a majority vote of the board members in an executive session.
8 The board shall record the vote in the minutes of that meeting. The
9 board shall maintain the confidentiality of the owner or owners of
10 the separate interest by identifying the matter by the parcel number
11 of the property, rather than the name of the owner or owners.

12 (4) The board shall provide personal notice to an owner of a
13 separate interest who occupies the separate interest if the board
14 votes to foreclose upon the separate interest. The board shall
15 provide written notice to an owner of a separate interest who does
16 not occupy the separate interest by first-class mail, postage
17 prepaid, at the most current address shown on the books of the
18 association.

19 (5) A nonjudicial *or judicial* foreclosure by an association to
20 collect upon a debt for delinquent assessments shall be subject to
21 a right of redemption. The redemption period within which the
22 separate interest may be redeemed from a foreclosure sale under
23 this paragraph ends 90 days after the sale.

24 (6) A nonjudicial *or judicial* foreclosure by an association to
25 collect upon a debt for delinquent assessments shall comply with
26 the following requirements:

27 (A) The minimum bid shall be at least 90 percent of the
28 appraised value, excluding any senior liens that the buyer is
29 required to assume.

30 (B) A state licensed or certified appraiser shall perform the
31 exterior appraisal (using Form 2055 Exterior Only Appraisal).
32 The cost of the appraisal shall be recouped at sale if the property
33 is auctioned.

34 (7) The amount that may be recovered in small claims court to
35 collect upon a debt for delinquent assessments may not exceed the
36 jurisdictional limits of the small claims court and shall be the sum
37 of the following:

38 (A) The amount of the assessment due and unpaid as of the date
39 of filing the complaint in the small claims court proceeding.



(B) In the discretion of the court, an additional amount described in subparagraph (A) equal to the amount due and unpaid for the period from the date the complaint is filed until the estimated date of judgment.

(d) This section does not apply to the debts of owners of separate interests in timeshare projects, as defined in Section 11003.5 of the Business and Professions Code, or to the debts of developers.

SEC. 8. Section 116.540 of the Code of Civil Procedure is amended to read:

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) A corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear and participate on his or her behalf, if (1) the plaintiff is serving on active duty in the

1 United States Armed Forces outside this state, (2) the plaintiff was
2 assigned to his or her duty station after his or her claim arose, (3)
3 the assignment is for more than six months, (4) the representative
4 is serving without compensation, and (5) the representative has
5 appeared in small claims actions on behalf of others no more than
6 four times during the calendar year. The defendant may file a claim
7 in the same action in an amount not to exceed the jurisdictional
8 limits stated in Sections 116.220 and 116.231.

9 (f) A party incarcerated in a county jail, a Department of
10 Corrections facility, or a Youth Authority facility is not required
11 to personally appear, and may submit declarations to serve as
12 evidence supporting his or her claim, or may authorize another
13 individual to appear and participate on his or her behalf if that
14 individual is serving without compensation and has appeared in
15 small claims actions on behalf of others no more than four times
16 during the calendar year.

17 (g) A defendant who is a nonresident owner of real property
18 may defend against a claim relating to that property without
19 personally appearing by (1) submitting written declarations to
20 serve as evidence supporting his or her defense, (2) allowing
21 another individual to appear and participate on his or her behalf if
22 that individual is serving without compensation and has appeared
23 in small claims actions on behalf of others no more than four times
24 during the calendar year, or (3) taking the action described in both
25 (1) and (2).

26 (h) A party who is an owner of rental real property may appear
27 and participate in a small claims action through a property agent
28 under contract with the owner to manage the rental of that
29 property, if (1) the owner has retained the property agent
30 principally to manage the rental of that property and not
31 principally to represent the owner in small claims court, and (2) the
32 claim relates to the rental property.

33 (i) A party who is a homeowner's association of a common
34 interest development may appear and participate in a small claims
35 action through a management company representative or
36 bookkeeper who appears on behalf of that homeowner's
37 association.

38 (j) At the hearing of a small claims action, the court shall
39 require any individual who is appearing as a representative of a
40 party under subdivisions (b) to (i), inclusive, to file a declaration



1 stating (1) that the individual is authorized to appear for the party,
2 and (2) the basis for that authorization. If the representative is
3 appearing under subdivision (b), (c), (d), or (i), the declaration also
4 shall state that the individual is not employed solely to represent
5 the party in small claims court. If the representative is appearing
6 under subdivision (e), (f), or (g), the declaration also shall state that
7 the representative is serving without compensation, and has
8 appeared in small claims actions on behalf of others no more than
9 four times during the calendar year.

10 (k) A husband or wife who sues or who is sued with his or her
11 spouse may appear and participate on behalf of his or her spouse
12 if (1) the claim is a joint claim, (2) the represented spouse has given
13 his or her consent, and (3) the court determines that the interests
14 of justice would be served.

15 (l) If the court determines that a party cannot properly present
16 his or her claim or defense and needs assistance, the court may in
17 its discretion allow another individual to assist that party.

18 (m) Nothing in this section shall operate or be construed to
19 authorize an attorney to participate in a small claims action except
20 as expressly provided in Section 116.530.

21 SEC. 9. Section 703.010 of the Code of Civil Procedure is
22 amended to read:

23 703.010. Except as otherwise provided by statute:

24 (a) The exemptions provided by this chapter or by any other
25 statute apply to all procedures for enforcement of a money
26 judgment.

27 (b) Except as provided in subdivision (c), the exemptions
28 provided by this chapter or by any other statute do not apply if the
29 judgment to be enforced is for the foreclosure of a mortgage, deed
30 of trust, or other lien or encumbrance on the property other than
31 a lien created pursuant to this division or pursuant to Title 6.5
32 (commencing with Section 481.010) (attachment).

33 (c) The exemptions provided by Article 4 (commencing with
34 Section 704.710) apply to foreclosures by the association of a
35 common interest development pursuant to subdivision (g) of
36 Section 1367.1 of the Civil Code, subject to the conditions of
37 Section 1367.4 of the Civil Code.

38 SEC. 10. Section 729.035 is added to the Code of Civil
39 Procedure, to read:

1 729.035. Notwithstanding any provision of law to the
2 contrary, the sale of a separate interest in a common interest
3 development is subject to the right of redemption if the sale arises
4 from a foreclosure by the association of a common interest
5 development pursuant to subdivision (g) of Section 1367.1 of the
6 Civil Code, subject to the conditions of Section 1367.4 of the Civil
7 Code.

8 SEC. 11. This act shall become operative only if Assembly
9 Bill 2598 of the 2003–04 Regular Session is enacted.

